

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4604 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KESHAVLAL CHHAGANLAL VAGHELA

Versus

DEPUTY MUNICIPAL COMMISSIONER (ENG.), A.M.C.

Appearance:

MR PM THAKKAR for Petitioner

MR SM MAZGAONKER for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 30/08/96

ORAL JUDGMENT

Heard learned counsel for the parties. The petitioner, a driver in the Ahmedabad Municipal Corporation, Ahmedabad, filed this Special Civil Application challenging thereunder the order of the

respondent, annexure 'A', dated 8.6.83, under which he was directed to pay 50% of the amount of compensation awarded to the injured in accident by the Motor vehicle which, at the relevant time, the petitioner was driving. While driving the vehicle of the Corporation, the petitioner injured two cyclists. The cyclists filed M.A.C. petition No.27 of 1981 before the Motor Accident Claims Tribunal (M.A.C.T.), Ahmedabad. The learned counsel for the petitioner does not dispute that the petitioner was a party in the aforesaid M.A.C. case before the M.A.C.T., Ahmedabad. The Tribunal has awarded Rs.2,930.81 as a compensation to the injured. The Tribunal has held that the petitioner was driving the vehicle rashly and negligently. Under the order impugned in this Special Civil Application, the Corporation has called upon the petitioner to pay Rs.1,465.50, the 50% of the amount of compensation awarded by the M.A.C.T. in favour of the injured.

2. The learned counsel for the petitioner has challenged the validity of this order on two counts. Firstly, it is contended that this order has been passed by respondent without giving a notice and opportunity of hearing to the petitioner. It has next been contended that the respondent has no authority whatsoever to recover the amount of compensation awarded to the injured from the petitioner. Lastly, the learned counsel for the petitioner contended that the vehicle which the petitioner was driving at the relevant time was insured with the insurance company and the amount of compensation which has been awarded to the cyclist has to be paid by the insurance company.

3. On the other hand, the learned counsel for the respondent contended that the Corporation has taken a lenient view in the matter against the petitioner. The Corporation cannot be fastened with liability of compensation because of rash and negligent driving of the petitioner. The compensation has to be paid by the Corporation and the petitioner jointly and severally. The amount of compensation is the result of rash and negligent driving of the petitioner and as such whole of the amount could have been recovered from the petitioner. The Corporation has taken a lenient view in the matter and only 50% of the amount was asked to be paid by the petitioner. It has next been contended that the petitioner was a party to the accident claims case where the Tribunal has found him to be driving a vehicle rashly and negligently. In view of these facts, there was no necessity on the part of the Corporation to give any opportunity of hearing to the petitioner. The

compensation has been awarded to the cyclists because of rash and negligent driving of the petitioner which fact has been found proved by quasi-judicial authority and as such, there was no necessity to hold any further inquiry. Lastly it is contended that it is the amount of compensation which has been awarded to the cyclists because of rash and negligent driving of the petitioner and as such the Corporation has all right to recover this amount from the petitioner. Otherwise also, the petitioner being a driver of the vehicle, was jointly and severally liable for this amount.

4. So far as the last contention of the learned counsel for the petitioner is concerned, Shri Mazgaonker urged that no such plea has been taken by the petitioner in the writ petition.

5. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties.

6. The facts are not in dispute that the petitioner has accident the vehicle of the Corporation which resulted in causing injury to the cyclists. There is no dispute that the injured filed an application before M.A.C.T., Ahmedabad and therein the amount of Rs.2,930.80 has been awarded as compensation. The accident occurred because of rash and negligent driving of the petitioner which is clearly borne out from the fact that the Accident Claims Tribunal awarded compensation to the cyclists. If it is so, then why the public body, the Municipal Corporation should bear the amount of compensation awarded to the injured. It is a public money and it cannot be allowed to go for the purpose other than the services to be rendered to the people. The petitioner was the person who caused accident by driving a vehicle of the Corporation rashly and negligently. It is his rash and negligent driving which resulted in the award of compensation in favour of the injured in the said accident. The petitioner has to reimburse that amount of compensation for which the Corporation has all justification to direct the petitioner to make the payment thereof. I find sufficient merits in the contention of Shri Mazgaonker, learned counsel for the respondent, that the Corporation has taken a lenient view against the petitioner. Otherwise, the whole amount of compensation awarded to the injured by the Tribunal could have been recovered from him. Only 50% of the amount has been ordered to be recovered. The second contention of the learned counsel for the petitioner is also devoid of any substance. The learned counsel for the petitioner is unable to point out

any provision from the Statute or any Resolution of the Corporation where it has been decided that even in vehicle accident cases, where the drivers of the Corporation were held to be driving the vehicles rashly and negligently, causing accidents, were not made liable for the amount of compensation. The amount of compensation has a direct nexus with the rash and negligent driving of the petitioner and as such the Corporation has all the right to recover this amount from the petitioner. There is no justification in the prayer of the petitioner who had been held to be responsible for causing of this accident. Nothing wrong has been done by the Corporation, but it has been burdened with the liability of compensation awarded to the cyclists because of rash and negligent driving of the petitioner. The Corporation has not given any licence to the petitioner to drive its vehicle rashly and negligently. It is his own act for which he could have been and should have been made liable to reimburse, if any, financial burden has been levied on the Corporation. The last contention which has been made by the learned counsel for the petitioner is also devoid of any substance and no such plea has been taken by the petitioner in this Special Civil Application. It is true that in case the vehicle was insured and this liability has to be reimbursed by the insurance company to the Corporation, then there may not be any question of recovering of this amount from the petitioner, but it is for the petitioner to establish this fact and which he utterly failed to make out any case. In support of the argument made by the learned counsel for the petitioner, there is no foundation of fact on record. It is a question of fact which has to be established and the petitioner has utterly failed to prove the same. The petitioner has not produced any material on record to show and establish (i) that the vehicle was insured with the insurance company, (ii) the insurance company was the party to the accident claims case filed by the cyclist, (iii) the award has also been passed against the insurance company, and (iv) the amount of compensation awarded by the Tribunal to the injured has been paid by the insurance company. The last argument is nothing but only an argument advanced without there being any factual foundation for the same on record in this Special Civil Application.

7. In the result, this Special Civil Application fails and the same is dismissed. The operation of the order annexure 'A' has been stayed by this Court and as such, the Corporation could not recover the amount of Rs.1465.50 from the petitioner for all these years. It is hereby ordered that the Corporation shall be entitled

to recover the amount in question from the petitioner together with interest thereon at the rate of 12% p.a. The interest shall be payable from 11th November 1983 till the amount is paid by the petitioner. The petitioner is further directed to pay Rs.1,000/- by way of costs of this petition to the Corporation. Rule is discharged. Ad-interim relief granted by this Court stands vacated.

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(sunil)